

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

VAN CHESTER THOMPKINS, Jr.

Petitioner,

v.

Case No. 17-cv-14106
Hon. Matthew F. Leitman

DUNCAN MACLAREN,

Respondent.

**ORDER DIRECTING CLERK OF THE COURT TO TRANSFER
SUCCESSIVE PETITION FOR WRIT OF HABEAS CORPUS TO UNITED
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

Petitioner Van Chester Thompkins, Jr. is a state prisoner confined at the Kinross Correctional Facility in Kincheloe, Michigan. On December 20, 2017, Thompkins filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (*See* ECF #1.) In his *pro se* petition, Thompkins challenges his 2002 state-court conviction of one count of first-degree murder, Mich. Comp. Laws § 750.316; one count of assault with intent to commit murder, Mich. Comp. Laws § 750.83; three counts of possession of a firearm in the commission of a felony, Mich. Comp. Laws § 750.227b; one count of felon in possession of a firearm, Mich. Comp. Laws § 750.224f; and one count of carrying a concealed weapon in a motor vehicle, Mich. Compl. Laws § 750.227. Because the Court concludes that the present petition constitutes a “second or successive petition” within the meaning of 28 U.S.C.

§ 2244(b)(3), the Court will direct the Clerk of the Court to **TRANSFER** this matter to the United States Court of Appeals for the Sixth Circuit.

I

Thompkins was convicted of the state crimes described above following a jury trial in the Oakland County Circuit Court. After exhausting his state court appellate remedies, Thompkins filed a petition for writ of habeas corpus in this Court. *See Thompkins v. Berghuis*, E.D. Mich. Case No. 05-cv-70188-DT. Another judge of this Court denied Thompkins' 2005 petition on the merits. *See Thompkins v. Berghuis*, 2006 WL 2811303 (E.D. Mich. Sep. 28, 2006). Thompkins appealed that ruling to the Sixth Circuit, and that court reversed in part and granted Thompkins habeas relief. *See Thompkins v. Berghuis*, 547 F.3d 572, 575 (6th Cir. 2008). The United States Supreme Court subsequently reversed the Sixth Circuit's ruling and remanded with instructions to deny Thompkins habeas relief. *See Berghuis v. Thompkins*, 560 U.S. 370 (2010); *reh. den.* 561 U.S. 1046 (2010).

Thompkins thereafter returned to this Court, where he filed a motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b). Another judge of this Court denied Thompkins' motion. *See Thompkins v. Berghuis*, 2011 WL 835927 (E.D. Mich. Mar. 8, 2011). The Sixth Circuit affirmed the district court's ruling and treated Thompkins' appeal as a request for permission to file a successive

or second habeas petition, which it denied. *See Thompkins v. Berghuis*, Case No. 11-1583 (6th Cir. Jan. 2, 2013).

In Thompkins' currently-filed petition, he again seeks federal habeas relief from his state-court convictions. (*See* ECF #1.)

II

An individual seeking to file a second or successive habeas petition must first ask the appropriate court of appeals for an order authorizing the district court to consider the petition. *See* 28 U.S.C. § 2244(b)(3)(A); *Stewart v. Martinez-Villareal*, 523 U.S. 637, 641 (1998). When a habeas petitioner files a second or successive petition for relief in the district court without preauthorization from the court of appeals, the district court must transfer the document to the court of appeals. *See In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997) (holding that “when a second or successive petition for habeas corpus relief or [a] § 2255 motion is filed in the district court without § 2244(b)(3) authorization from this court, the district court shall transfer the document to this court pursuant to 28 U.S.C. § 1631.”).

As described above, Thompkins has previously filed a habeas petition with this Court in which he challenged his state-court convictions. That petition was denied on the merits. And Thompkins has not received preauthorization from the Sixth Circuit to file a second or successive habeas petition. Therefore, Thompkins

cannot proceed with the present petition unless and until he first obtains permission to file a second or successive habeas petition from the Sixth Circuit.

III

Accordingly, for the reasons stated above, **IT IS HEREBY ORDERED** that the Clerk of the Court shall transfer Thompkins' petition for habeas relief (ECF #1) to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631.

s/Matthew F. Leitman

MATTHEW F. LEITMAN

UNITED STATES DISTRICT JUDGE

Dated: January 9, 2018

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on January 9, 2018, by electronic means and/or ordinary mail.

s/Holly A. Monda

Case Manager

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